



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/673,947	12/15/2000	Bernard Viville	518-1013	8926
23644	7590	02/02/2005	EXAMINER	
BARNES & THORNBURG P.O. BOX 2786 CHICAGO, IL 60690-2786			HANSEN, JAMES ORVILLE	
			ART UNIT	PAPER NUMBER

3637

DATE MAILED: 02/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/673,947

Applicant(s)

VIVILLE, BERNARD

Examiner

James O. Hansen

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-14 and 16-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-14, 16-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

1. The amendment filed August 30, 2004 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: “supports are *eccentrically* movable” [claim 1]. There is no support in the application as originally filed to support the use of the term “eccentrically”. It is noted that the term constitutes multiple readings such as “deviating from a circular path” for example. As such, the mere depiction of the supports on the mast as depicted in figure 2 is not viewed as supplying a basis of support for the newly cited limitation since the limitation has multiple readings. Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 11-14 & 16-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In Claim 11, the phrase “some of said supports are eccentrically movable in rotation about an axis” is viewed as being unclear and confusing since the supports are viewed as being attached to the mast along a vertical axis and they rotate axially about this axis [the supports do not appear

Art Unit: 3637

to deviate from a circular path when rotated]. Consequently, the remaining claims are rejected because they are dependent upon an indefinite claim.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 11-14 & 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Ball [U.S. Patent No. 2,463,506]. Ball (figures 1-12) teaches of a movable chest (10 or 13 – *movable* in the sense that the chest may be repositioned [positioned on a wall or moved to a ceiling mounted position] depending upon the needs of a user) capable of distributing and displaying food [note fig. 1 – extended version for example], the chest being provided with a vertical mast (17) on which supports (16) are fixed via elements (59), the mast having a longitudinal axis (see fig. 1), the chest having lifting means (disclosed as a suspension device) in the chest for moving the mast in vertical translation, and in which at least some of the supports are eccentrically movable [in as much as applicant teaches the claimed limitation] in rotation about an axis which coincides with the longitudinal axis of the mast [it is noted that the supports are positioned for rotary movement as disclosed in the specification, and that rotational movement coincides with the longitudinal axis of the mast]. The chest being suitable for maintaining a constant temperature [it's completely enclosed for example] as broadly recited. The mast being adjacent to a vertical edge (fig. 1) as broadly recited. The chest including a housing (viewed as the compartment or “housing” above element

Art Unit: 3637

23 as depicted in fig. 1) capable of accommodating thermal blocks. The chest including a spacer (middle 61) located between two supports (16's) on the mast as broadly recited. The chest further including a retractable guide (36) for facilitating insertion of the supports as broadly recited.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 11-13, 16 & 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bugenhagen [U.S. Patent No. 2,563,208] in view of Hoffmann et al., [U.S. Patent No. 3,531,169]. Bugenhagen (figures 1-10) teaches of a movable chest (1 - *movable* in the sense that the chest may be repositioned depending upon the needs of a user) capable of distributing and displaying food [note fig. 1 –extended version for example], the chest being provided with a vertical mast (3) on which supports (disclosed as shelves) are fixed via element (5), the mast having a longitudinal axis (see fig. 1), the chest having lifting means (see fig. 4) in the chest for moving the mast in vertical translation, and in which at least some of the supports are eccentrically movable [in as much as applicant teaches the claimed limitation] in rotation about an axis which coincides with the longitudinal axis of the mast [it is noted that the supports are utilized for rotary movement as disclosed in the specification, and that rotational movement coincides with the longitudinal axis of the mast]. The chest being suitable for maintaining a constant temperature [refrigerator]. The mast being

Art Unit: 3637

adjacent to a vertical edge (fig. 1) as broadly recited. The chest including a spacer (25 for example) located between two supports (shelves) on the mast as broadly recited. The chest further including a retractable guide (5) for facilitating insertion of the supports as broadly recited. Bugenhagen teaches applicants inventive claimed structure as disclosed above; including a lid (2) for the top of the chest, but Bugenhagen does not show the lid as being two parts which may open up to form two shelves, or show castors on the bottom of the chest. However, Hoffmann (figures 1-9) teaches of a chest (10) in an analogous art having a lid comprising two parts (25) that open up to form two horizontal shelves (fig. 2), and castors (20) on the bottom of the chest. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the chest of Bugenhagen so as to incorporate a two lid halves and castors as taught by Hoffmann because this arrangement would provide Bugenhagen with a lid that when removed would function as serving platforms on either side of the open top of the chest thereby providing an additional work surface while utilizing the chest, and the castors would provide mobility to Bugenhagen's chest so that the chest could be wheeled to desired locations without having to lift the chest.

***Allowable Subject Matter***

8. Claim 17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

9. Applicant's arguments filed August 30, 2004 have been fully considered but they are not persuasive. It is viewed that applicant's remarks are adequately addressed in the above rejections.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Molovinsky and Scott describe structures with a vertically movable mast.

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James O. Hansen whose telephone number is 703-305-7414. The examiner can normally be reached on Mon.-Fri. 8-4pm.

Art Unit: 3637

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James O. Hansen  
Primary Examiner  
Art Unit 3637

JOH  
November 2, 2004